

REMARKS

1. In response to the Office Action mailed February 7, 2007, Applicants respectfully request reconsideration. Claims 1-35 were last presented in the application. In the outstanding Office Action, claims 1-26 were rejected, claims 27-35 were withdrawn from consideration. By the foregoing Amendments, claims 5, 7, 11, 14-21, 26-35 have been cancelled, and claims 36-43 have been added. No new matter has been added. Thus, upon entry of this paper, claims 1-4, 6, 8-10, 12, 13, 22-25, and 36-43 will be pending in this application. Of these 22 claims, 3 claims (claims 1, 22 and 38) are independent. Based on the above Amendments and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

Art of Record

2. Applicants acknowledge receipt of form PTO-892 listing additional references identified by the Examiner.
3. Applicants thank the Examiner for returning forms PTO/SB/08a filed by Applicants on December 22, 2004, which have been initialed by the Examiner indicating that the Examiner has considered the references cited therein.

Foreign Priority

4. Applicants note with appreciation Examiner's acknowledgement of Applicants' claim for foreign priority under 35 U.S.C. §119, and further indication that all certified copies of the priority documents have been received.

Election/Restriction

5. Applicants affirm that during a telephone conversation on January 30, 2007, a provisional election was made without traverse to prosecute the invention of Group 1, i.e. claims 1-26, drawn to an implantable electrode array. Claims 25-35 were withdrawn from further consideration by the Examiner as being drawn to a non-elected invention.

New Claims

6. Applicant has added new claims 36-43. Support for the new claims is found in the originally filed application, including the specification and claims, and drawings.

Objections to the Specification

7. The Examiner has objected to the specification because of informalities. With the exception of one objection which Applicants disagree with for the stated reason, proper correction has been made. Therefore, Applicants respectfully request that the objections to the specification be reconsidered and that they be withdrawn.

Claim Objections

8. The Examiner has objected to claim 23 and 24. Appropriate correction has been made to accommodate the Examiner's objections.

Claim Rejections – 35 USC § 112

9. Claims 7-10, 16, 17, 25, and 26 rejected 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicants regard as the invention. Claims 7, 16, 17 and 26 have been cancelled making these rejections moot. Claims 8-10 and 25 have been amended to overcome the Examiner's rejections. Reconsideration and withdrawal of these rejections is respectfully requested.

Claim Rejections – 35 USC § 102

10. Claims 1-8, 13-15, 20-22, 25, and 26 rejected under 35 U.S.C. 102(b), as being anticipated by WO 00/69513 to Kuzma, *et al.* (hereafter "Kuzma '513"). Based on the following Remarks, Applicant respectfully requests reconsideration and withdrawal of these rejections.

11. As amended, Applicants' independent claim 1 recites, in part, a stabilizing collar comprising "at least one anchor configured to *substantially prevent translation by said carrier along, and rotation about*, the longitudinal axis of said carrier." (*See*, Applicants' amended independent claim 1, above.)

12. Kuzma '513 describes a cochlear electrode array with head 18 having shoulders 19 and flexible flaps 16 which are used to prevent the array from "slipping out" of the cochlea after

the array has been inserted, via a slit 42. (See, Kuzma '513, pg. 8, ll. 11-23.) Array 10 and attached flaps 16, with the flexible flaps attached thereto, is described as being "slipped" through slit 42 so that the shoulder 19 "rests" against the middle-ear side of round window membrane 40. (See, Kuzma '513, pg. 8, ll. 13-23.) Flaps 16 are pressed toward the carrier body to permit them to be slipped through slit 42. After passing through slit 42, flaps 16 rest on the other side of round window membrane 40, opposite shoulder 19. The array is described as "flattened" or pancake shaped. Once the flat shaped array has been passed through the flat shaped slit 42, slit 42, due to its flat shape holding a similarly flat-shaped array 10, "advantageously maintains the medial side of the array 10 facing in the right direction." (See, Kuzma '513, pg. 8, ll. 24-30.)

13. Nowhere does Kuzma '513 teach "at least one anchor configured to *substantially prevent translation by said carrier along, and rotation about*, the longitudinal axis of said carrier." (See, Applicants' amended independent claim 1, above.) As noted above, at least two different structures are expressly disclosed as providing the above recited features provided by Applicants' invention as claimed. In Kuzma '513, translation along the longitudinal axis of the carrier is described as being prevented by the flaps which, once slipped past slit 42, will physically prevent the carrier from slipping out. The medial side of the carrier is maintained in the proper orientation by the flat slit holding the flattened carrier body within the flat slit, thus attempting to prevent rotation about the longitudinal axis of the carrier. (See, Kuzma '513, pg. 8, ll. 16-30.)

14. For at least these reasons, Applicants assert that independent claim 1, as amended, is neither taught nor suggested by Kuzma '513 or other art of record. Similarly, Applicant asserts that amended independent claim 22 and new independent claim 38 are also patentable over the art of record.

15. Claims 1 and 11 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,070,105 to Kuzma (hereafter "Kuzma '105"). Based on the following Remarks, Applicant respectfully requests reconsideration and withdrawal of these rejections.

16. As noted above, Applicants' amended independent claim 1 recites, in part, a stabilizing collar comprising "at least one anchor configured to *substantially prevent translation by said carrier along, and rotation about*, the longitudinal axis of said carrier." (See, Applicants' amended independent claim 1, above.)

17. Kuzma '105 describes a cochlear electrode array having a flexible carrier 116 and legs 118 which form the walls on either side of a "U" shaped array, the shape and configuration helping to prevent twisting of the array while it is being inserted into the cochlea. (See, Kuzma '105, col. 7, ll. 58-65.) Leads ("wires") 103 connecting each of the contacts 102 on carrier 104 with a stimulation unit are carried to the electrode array 100 by lead body 114 through elbow 112. (See, Kuzma '105, Fig. 1A, 3A) During insertion, the base portion 117 of the "U" shaped array is positioned against modiolus 124 and maintained in that position by the "spongy" legs 118 which flex and compress but assist in preventing twisting by the array. The U-shaping of the array defined by base 117 and legs 118 on either side of base 117 facilitate the preventing of twisting during insertion. (See, Kuzma '105, col. 7, ll. 58-65.)

18. Nowhere does Kuzma '105 describe lead body 114 or any other structure being configured to "to substantially prevent translation by said carrier along, and rotation about, the longitudinal axis of said carrier" as claimed in Applicants' amended claim 1. As for the lead body 114 in Kuzma '105, it is described as simply having wires disposed therein which go from the stimulator unit to each of the electrodes on the carrier. As described in Kuzma '105 and as can be seen in figure 1A of Kuzma '105, lead body 114 is set apart from carrier 104 by elbow 112. Therefore, no structure disclosed in Kuzma '105, including lead body 114, is configured to "to substantially prevent translation by said carrier along, and rotation about, the longitudinal axis of said carrier" as claimed in Applicants' amended claim 1.

19. For at least these reasons, Applicants assert that independent claim 1, as amended, is neither taught nor suggested by Kuzma '105 or other art of record.

Dependent Claims

20. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicant respectfully asserts that the dependent claims are also allowable over the art of record.

Conclusion

21. In view of the foregoing, this application should be in condition for allowance. A notice to his effect is respectfully requested.

22. Applicants reserve the right to pursue any cancelled claims or other subject matter

disclosed in this application in a continuation or divisional application, cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicants reserves the right to pursue such claims in a continuation or divisional application.

Dated: July 9, 2007

Respectfully submitted,

Electronic signature: /Michael Verga/
Michael Verga

Registration No.: 39,410
CONNOLLY BOVE LODGE & HUTZ LLP
1875 Eye Street, NW
Suite 1100
Washington, DC 20006
(202) 331-7111
(202) 293-6229 (Fax)
Attorney for Applicant